

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

November 19, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, George Papandreas and Bill Burton

MEMBERS ABSENT: Jim Shaffer

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the October 15, 2014 Hearing: POSTPONED

III. UNFINISHED BUSINESS: None

IV. NEW BUSINESS:

A. V14-50 / Mon County Habitat for Humanity / Jerome Park: Request by Evan Zuverink, on behalf of Mon County Habitat for Humanity for variance relief from Article 1335.07(F) as it relates to sidewalks along Jerome Street; Tax Map 24, Parcel 41; R-1A, Single-Family Residential District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner's representative, Michael Biafora of 4 Squirrel Lane, who stated the request for a four-foot sidewalk is due to the budget and the topography and trees make for a difficult layout to construct a walkway.

Burton asked if the street would be a private or publically owned. Biafora explained the street is currently being developed as a private street but will meet City codes with the hope or intent of the City accepting the street in the future.

Burton asked who would maintain the sidewalk after constructed as the code states it is the owner's responsibility to maintain the sidewalks. Burton noted that the home owners may not have the financial means to maintain the sidewalks. Biafora stated they are still working on who will care for the sidewalks.

Burton referred to the parking lot in the middle of the housing development and asked who would ensure safety for the people walking through the street to the sidewalk. Biafora noted the plan intended for little traffic within the cul-de-sac.

Fletcher explained the parking lot spaces were developed in response to the Planning Commission requests that the narrow width of the road would prohibit emergency responders to get through with on-street parking. Six of the spaces planned are intended for visitors.

Burton expressed that when sidewalks are not on the property then it becomes a safety issue.

Cardoso asked Biafora to explain the topography issues with constructing the sidewalks. Biafora explained there are several large trees they would like to maintain closer to Jersey Avenue and they are trying not to encroach onto the root zones of those existing trees.

Cardoso asked if there was anywhere else where trees would prohibit a five-foot sidewalk. Biafora referred the question to Scott Copen, engineering for project.

Scott Copen of Bruceton Mills explained the main topographical issues exist on the lower end of Central and Jersey. A five-foot sidewalk would be possible along Jerome Street with additional work.

Bossio asked if two parking stalls per unit would be provided. Biafora confirmed and stated the additional parking is for visitors and to keep people from parking on the street. Bossio asked if the turning radius is sufficient for the fire department. Copen confirmed and stated the plan has been approved with the City Engineer.

Bossio referred to the existing houses from Phase I and asked if the sidewalk would be connected. Copen confirmed and explained the intent of the sidewalk is to create a more walkable community and to connect with the City of Morgantown in a safe way. The sidewalk inside the development would pose a safety risk.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Noah Hoffman of 1289 Carlisle who stated his involved with the Jerome Park neighborhood association and his property borders the lower portion of the development and has concerns with the drainage issues. Hoffman asked for explanation of how the change in sidewalks will affect the drainage.

Bossio explained the Board reviews the surface of the sidewalks and it is not the BZA's responsibility to ensure there is proper drainage.

Bossio asked Hoffman if he has discussed his concerns with Council and MUB. Hoffman confirmed and explained that Councilor Kawecki supports the development for the good of the community and does not want to cause problems and interfere with this non-profit project. Hoffman noted there are current drainage issues and MUB is aware.

Bossio invited Copen to the podium and asked if the sidewalks would affect the drainage. Copen explained the drainage flow and noted there is a current drainage problem along Jerome. The proposed sidewalks would help the drainage problem to manage the flow of water.

Biafora explained that MUB has given them a series of places to install curb inlets once sidewalks are constructed that will catch and manage the water.

There being no further public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher read the Staff recommendations.

Papandreas asked Fletcher if the proper documentation has been obtained from the Engineering Department that would allow the Board to approve a four-foot sidewalk. Fletcher confirmed.

Burton stated his biggest concern is the maintenance of the sidewalks and the costs associated.

Bossio asked if it was the Board's responsibility to worry about financial constraints to care for sidewalk.

Burton referred to City Code that states that owners have to maintain the sidewalks. Bossio said the City would put a lean on the property if the sidewalks aren't maintained.

Cardoso agreed and doesn't feel financial burdens are the responsibility of the Board.

Cardoso noted that part of the sidewalk could be constructed at five feet and asked what is currently along Jersey Avenue. Biafora stated that Jersey Avenue will include five-foot sidewalks.

Burton expressed the sidewalks should remain uniform as it creates problems in perspective for people walking to decrease the width to four feet.

Cardoso noted that Jerome Street is a narrow road and any sidewalk would be an improvement.

Papandreas asked if the topography issues were substantial enough to not have five foot sidewalks.

Bossio asked Biafora why the sidewalks cannot be five feet besides cost being an issue. Biafora stated they are trying to maintain vegetation as they have removed a substantial amount already.

Burton asked if five-foot sidewalks could be constructed if the trees were not there. Biafora confirmed.

Fletcher explained that sidewalks are not required along the road, but would be required within the subdivision.

Burton expressed it is a good trade-off and he is comfortable with the four-foot sidewalks.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V14-50 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The variance request will allow MCHFH to construct additional sidewalks in the Jerome Park

neighborhood which should serve to enhance the walkability of the community and public safety.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The variance is requested to enhance the walkability of Jerome Street where sidewalks do not currently exist. MCHFH has made this request to assist with making the community more walkable. Whereas there are no sidewalks along this stretch of road, MCHFH are requesting the variance to make the area safer for pedestrians along Jerome Street.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance will serve to help alleviate unsafe walking conditions in the community and reduce development costs for Mon County Habitat for Humanity as they seek to develop 10 additional units of affordable housing within the City of Morgantown.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

By granting this variance, MCHFH will increase walkability within the community and serve the greater community need of decent, affordable housing within the city of Morgantown.

Papandreas moved to approve V14-50 without conditions; seconded by Burton and carried unanimously.

Bossio reminded Mr. Biafora that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

B. V14-51 / Ralph Cook / 819 Fenwick Avenue: Request by Ralph Cook for variance relief from Article 1331.08 as it relates to accessory structures at 819 Fenwick Avenue; Tax Map 2, Parcel 55; R-1, Single-Family Residential District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner Ralph Cook of 819 Fenwick Avenue who stated the structure would be opened and intended for shading purposes. The structure is a patio or pavilion type structure and can also be used as a carport in bad weather.

Bossio noted there is already a 2 car garage in the rear of the property. Cook confirmed and explained the location of the proposed carport structure.

Bossio asked if this proposed structure would make for two accessory structures on the property. Cook confirmed.

Cook explained he is unable to attached the structure to the side of house due to a MUB retention system.

Papandreas asked when the variance request was submitted. Cook could not recall. Papandreas asked if the structure has been erected and if so when. Cook confirmed the frame of the structure had been erected in August or September.

Fletcher noted the date on the building permit application is September 19th, 2014.

Papandreas asked if the structure was built without a permit. Cook confirmed.

Bossio asked if the structure could be enclosed at a later date into another garage. Fletcher confirmed.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher read the Staff recommendations.

Papandreas asked if the proposed structure is greater than 16 feet from the right-of-way. Cook explained the structure is approximately 15 feet from right-of-way as there is a retention system pipe that prohibits another foot.

Fletcher referred to the site plan and noted that 16 feet was listed. Cook stated the measurement was incorrect and the proposed structure is 15 feet from the edge of the black top. Fletcher noted that may not be the actual right-of-way.

Bossio noted the narrowest part of lot along Plymouth would be the frontage per City Code. Fletcher explained the house is addressed with the frontage as Fenwick Avenue and there are existing orientation considerations written into the code.

Papandreas asked if the structure is closer than 16 feet to the right-of-way. Fletcher stated it could be but he doesn't know how the asphalt is aligned within the 40 feet to know where the center is located.

Bossio inquired if the City Code allows for two accessory structures on one parcel. Fletcher stated there are no limitations on the number of detached accessory structures but they cannot in total exceed 50% of the footprint area of the principal structure.

Bossio noted the location of the proposed structure is not permitted per the Planning and Zoning Code. Fletcher confirmed.

Bossio asked Cook if a building permit was applied for prior to building the structure. Cook explained he started to build the structure when Code Enforcement served him a stop work order. He was then told that there were no code issues with the structure but needed a variance.

Fletcher asked Cook if the fence was erected on the property line. Cook confirmed. Bossio asked how many feet were between the fence and the structure. Cook responded with three feet.

Cardoso recognized the self-imposed financial hardship with the project and expressed the project could be done a better way to meet the code and noted corner lots prevent special

issues. The proposed project has many special issues that many were created by the petitioner.

Bossio explained that to grant a variance, there has to be some sort of hardship. Bossio noted the MUB retention system prevents him from adding the structure onto the principal structure. Bossio stated the Board is not supposed to look at financial constraints imposed by the petitioner.

Papandreas stated the Board has to review the application like the structure has not been built yet. Bossio agreed.

Papandreas stated the structure would not fit onto the property with the water retention system and is a self-imposed issue.

Burton expressed concerns with the retention system and the location of the proposed structure.

Board members decided to review the Findings of Facts separately for Case No. V14-51.

Cardoso made a motion to find in the affirmative for Finding of Fact 1 as presented by the petitioner; seconded by Burton. Motion carried unanimously.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because: Will not affect anyone. Structure will be located off my personal driveway behind the fence. Property on corner lot so doesn't adjoin other properties where structure will be located.

Papandreas made a motion to find in the negative for Finding of Fact 2 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 2 – The variance DOES NOT arise from special conditions or attributes which pertain to the property for which a variance is sought as conditions were in fact created by the petitioner.

Papandreas made a motion to find in the negative for Finding of Fact 3 as revised by Staff; seconded by Burton. Motion carried unanimously.

Finding of Fact No. 3 – The variance will NOT eliminate an unnecessary hardship and permit a reasonable use of the land, because no hardship was demonstrated by the petitioner.

Papandreas made a motion to find in the negative for Finding of Fact 4 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 4 – The variance as requested will NOT allow the intent of the zoning ordinance to be observed and substantial justice done.

Papandreas moved to deny variance request V14-51 based on the Board's Findings of Fact; seconded by Burton. Motion carried unanimously.

Bossio reminded Mr. Cook that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. **V14-52 / Strategic Management Corporation / 1073 Windsor Avenue:** Request by Kurtis Clinton, on behalf of Strategic Management Corporation for variance relief from Article 1333.04 as it relates to setback standards at 1073 Windsor Avenue; Tax Map 6, Parcel 26; R-1, Single-Family Residential District.

Fletcher presented the Staff Report.

Bossio recognized the petitioner, Kurtis Clinton of Strategic Management Corporation who stated they will be using the same footprint from the original house that was built in the 1960's.

Bossio informed petitioner he owns property within 50 feet of proposed structure and asked if he needed to recuse himself. Clinton stated he was okay with Bossio reviewing the petition.

Cardoso asked if any other designs for the house were considered. Clinton explained the initial design included the original foundation. They discovered the original foundation would not work and would be catastrophic to the process, so they razed the remaining foundation and started over.

Bossio recognized Chris Barnhizer of 842 Tremont Street, who is a business partner with Clinton, stated the code only allows for a 24 foot unit and the variance is necessary to build the structure as a single family house to fit the character of the community.

Bossio stated he is familiar with the property and explained the foundation was not salvageable. The road to the rear of the property, Douglas Avenue, has been opened up by a recent builder and can be accessed and maintained by adjacent property owners. Bossio stated he is in favor of the design.

Burton asked what street the driveway entrance would be accessed from. Barnhizer stated the driveway would be off of Douglas Avenue.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher informed the Board that Staff received an email in support of the setback variance from Deborah Marano of 1068 Windsor Avenue, and an email in opposition from Roxanne Humbert of 1069 Windsor Avenue.

Fletcher read the Staff recommendations.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V14-52 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

It appears that the previous house had a similar width as that proposed by the petitioner's new construction plan, which does not appear to have adversely impacted the general public, the rights of neighbors, or the enjoyment and value of adjacent properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the

property for which a variance is sought and which were not created by the person seeking the variance, because:

The current minimum lot width standard was not in effect when the parcel was created and the minimum side setback standard was not in effect when the previous house was constructed. The new home will be the same size as the structure that was just razed and removed. The petitioner did not subdivide the property into its present configuration and lot frontage, which includes a four-foot jog in the side property boundary alignment.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The new home will set in the same width footprint as the home that has been there for over 50 years. The parcel is considered nonconforming as it does not meet current minimum lot width standards.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Relief from the minimum side setback requirement, given the nonconforming width of the parcel, enables a new home to be built in the nearly identical location of the former structure. The proposed single-family house should add value to the neighborhood rather than lower it. Also this variance will not encroach on any of the neighbor's properties any more than it has for the past 50 plus years. Observing the minimum side setback requirement would leave only 24 feet in width of buildable area, which would not be consistent with the development pattern of homes along Windsor Avenue.

Papandreas moved to grant variance relief as presented for Case No. V14-52 with the condition that the proposed house may not be located closer than five (5) feet from either side property boundary; seconded by Cardoso and carried unanimously.

Bossio reminded Mr. Clinton that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. V14-53 / US Cellular / 1451 Earl Core Road:** Request by Rudy Hoffert of City Neon, on behalf of US Cellular, for variance relief from Article 1369 as it relates to signage at 1451 Earl Core Road; Tax Map 31, Parcel 100; B-5, Shopping Center District.

Fletcher read the Staff Report.

Bossio recognized the petitioner's representative, Rudy Hoffert of 1095 Chaplin Road, who concurred with the Staff Report.

Burton asked if the current sign on the road would be removed. Hoffert stated there has been no indication the existing sign will be removed.

Cardoso referred to the photograph in the packet and asked if the illustration was true to size. Hoffert explained the proposed sign appears small in illustration and explained the square footage is taken from the star in the sign.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized Garrett Richards, construction and property manager with Glenmark Holding, who stated he represents the owner of the property who is in favor of the proposed sign.

There being no further public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher informed the Board of an email received by Staff from Mark Nesselroad, Jr. of Glenmark Holding, who is in favor of the proposed sign.

Fletcher read the Staff recommendations.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V14-53 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Other business establishments in Morgantown have existing signs that are similar in size and style, which provides the type of visibility to the public for which the petitioner seeks to emulate and enjoy.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears that the majority of commercial signs along the Earl L. Core Road corridor are nonconforming as most do not meet maximum area standards set forth in the Planning and Zoning Code.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The sign appears to be relatively consistent with other shopping locations throughout Morgantown including several businesses on Earl L. Core Road.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The sign should help to promote business for the tenant and the community.

Papandreas moved to approve V14-53 as requested; seconded by Cardoso. The motion carried unanimously.

Bossio reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- E. CU14-11 / Tin 202 / 202 High Street:** Request by Christopher Evans for conditional use approval of a “Restaurant, Private Club” use located at 202 High Street; Tax Map 26A, Parcel 142; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner’s Christopher Evans and Sam Schneider, both of 202 High Street. Evans stated the intent is to bring a nice establishment to the downtown area that will attract a professional crowd.

Bossio noted the Board conducted a site visit and expressed favor in the intentions of the restaurant. Papandreas agreed.

Bossio noted the garbage is in a contained area and is sufficient for the size of the restaurant.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed and asked for Staff’s recommendation.

Fletcher read the Staff recommendations.

Papandreas made a motion to grant the one-year bona-fide restaurant for CU14-11; seconded by Burton. Motion carried unanimously.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU14-11 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The establishment and tenant space are small. On-street metered and public parking lots within the immediate area allow for parking.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

An Ansul fire suppression system has been installed in the kitchen and all safety precautions have been addressed in accordance to restaurant standards and guidelines. Further, the proper steps to meet all city and state fire code laws have been followed.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The building was not changed or added to on the outside. The structure was not disturbed and remains the same as it has been. Adequate light and air remain unchanged.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The building/structure was not changed on the outside so nothing in regards to overcrowding has occurred.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The establishment is small and the focus demographic is 25 years of age and up. The proposed development does not include a residential use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation,

water, sewage, schools, parks, or other public requirements, in that:

The use should not burden existing public services or facilities that are currently available that serve the immediate area.

Papandreas moved to approve CU14-11 with the following conditions:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.
2. That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
3. To ensure that the petitioner’s business description and plans are executed as described and considered in granting the one-year “bona fide restaurant” waiver, the subject “Restaurant, Private Club” use must:
 - a. Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner’s conditional use application.
 - b. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
5. That table seating, or non-bar seating, may not be reduced below 28 seats.
6. That the beneficiary of this conditional use approval is Schnevans, LLC, which may not be transferred without prior approval of the Board of Zoning Appeals.

Motion was seconded by Burton and carried unanimously.

Bossio reminded Mr. Evans that the Board’s decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

- F. CU14-12 / Dos Bros, LLC / 350 High Street:** Request by Mark Tampoya, on behalf of Dos Bros, LLC, for conditional use approval of a “Restaurant, Private Club” use located at 350 High Street; Tax Map 26A, Parcel 110; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner Mark Tampoya of 108 Willowick Drive who concurred with the Staff report.

Bossio asked if both Tampoya and Ahmad Abulaban are on the LLC. Fletcher confirmed.

Bossio asked who would be present to run the business. Tampoya explained that Abuladan will do very little as he is close to retirement.

Bossio asked Tampoya to explain his previous restaurant experience. Tampoya stated he managed a few little restaurants in the past.

Bossio asked Tampoya if he understood the regulations associated with serving alcohol. Tampoya confirmed and explained they are trying to bring a Mexican restaurant into the downtown area.

Bossio asked what would separate his restaurant from the other Mexican restaurants. Tampoya explained his chef, Kevin Morris, is experienced and knows what it takes to serve a good meal.

Bossio asked for the current food cost percentage since opening. Tampoya stated the food costs are around 20 percent and it's all in how you fold the tortilla.

Bossio asked if they will offer a full line of liquor. Tampoya stated that will not have a full bar, but will have a nice array of tequila's.

Bossio asked if there will be a computerized register. Tampoya confirmed.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed and asked for Staff's recommendation.

Fletcher read the Staff recommendations.

Papandreas asked if the Mediterranean Market had a liquor license prior to transferring to Dos. Bros. Tampoya stated they did not offer alcohol or have a license.

Bossio expressed concerns with granting approval to an LLC as the conditional use can be transferred to another LLC. Fletcher noted that it is rare to see an LLC transfer to another as it may come with headaches such as debt.

Bossio asked if the people listed on the LLC could change hands without having to come before the Board for another conditional use approval. Fletcher stated he would have to research that question.

Papandreas asked if this is something that could be included as a condition in the waiver to ensure Tampoya will be with the restaurant for the first year.

Fletcher stated if the Board has any concerns with the business plan then they should vote against the waiver.

Papandreas noted that even if they deny the waiver, they are still permitted by right to have beer and wine. Bossio agreed.

Cardoso noted the Board has to base their decision on what is being presented and they have received all parts of the business plan. Cardoso expressed concerns in the menu prices being low and meeting the 60/40 requirement.

Papandreas did not feel the 60/40 would be an issue as people don't consume alcohol during the lunch hours.

Burton made a motion to grant the one-year bona-fide restaurant for CU14-12; seconded by Papandreas. Motion carried unanimously.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU14-12 as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The location has been operated as a restaurant for decades and with no change in High Street traffic patterns.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The property is up to code in all aspects and will continue to operate within all proper guidelines.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

No changes to the basic restaurant have been made that would affect existing air circulation or sunlight distribution around the building.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

We will continue to operate as it has for decades. The proposed development does not include a residential use.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

We will be operating as a restaurant. The proposed development does not include a residential use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The use should not burden existing public services or facilities that are currently available and serve the immediate area.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The property has been cleaned painted and any issues have been addressed. No significant changes. The removal of the fading awning and façade renovations appear to positively contribute to the streetscape.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

Restaurants in the downtown area contribute the economic vitality and attraction of the urban core.

Papandreas moved to approve CU14-12 with the following conditions:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.
2. That the petitioner must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.

3. To ensure that the petitioner's business description and plans are executed as described and considered in granting the one-year "bona fide restaurant" waiver, the subject "Restaurant, Private Club" use must:
 - a. Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner's conditional use application.
 - b. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, Private Club" use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
4. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.
5. That the beneficiary of this conditional use approval is Dos Bros, LLC, which may not be transferred without prior approval of the Board of Zoning Appeals.

Motion was seconded by Burton and carried unanimously.

Bossio reminded Mr. Tampoya that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

V. ANNOUNCEMENTS:

Fletcher informed the Board that the Planning and Zoning Code has been updated to include amendments that have been passed by City Council over the past year. Hard copies will be distributed at the next hearing to avoid mailing costs.

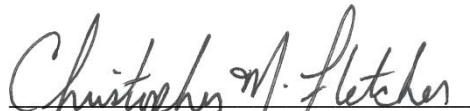
Fletcher informed the Board that both terms for Bossio and Papandreas are expiring at the end of December. Bossio does not want to be reappointed. Papandreas has expressed his desire to be reappointed. City Council has not decided yet on Board appointments. If City Council does not finalize the appointments before the end of this calendar year, all three remaining Board members must attend the January 2015 hearing to establish a quorum.

VI. ADJOURNMENT: 8:53 PM

MINUTES APPROVED:

December 17, 2014

BOARD SECRETARY:


Christopher M. Fletcher, AICP